

IN THE SUPREME COURT OF MISSOURI

No. SC87980

**INDEPENDENCE-NATIONAL EDUCATION ASSOCIATION,
INDEPENDENCE-TRANSPORTATION EMPLOYEES ASSOCIATION,
INDEPENDENCE-EDUCATIONAL SUPPORT PERSONNEL,
RANDI LOUISE MALLET, AND RON COCHRAN,**

Plaintiffs/Appellants,

v.

INDEPENDENCE SCHOOL DISTRICT,

Defendant/Respondent.

**BRIEF OF AMICUS CURIAE
AMERICAN FEDERATION OF TEACHERS-MISSOURI**

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TABLE OF CONTENTS

	<u>Page</u>
Statement of Jurisdiction.....	4
Statement of Facts.....	4
Interest of Amicus.....	4,5
Argument.....	5-14
Conclusion.....	14
Certificate of Service.....	16
Rule 84.06 Certification.....	17

TABLE OF CASES AND OTHER AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Board of Education of Reorganized School District No. 5 of St. Charles County</i> , 506 S.W.2d 429 (Mo. 1974).....	11
<i>City of Hazelwood v. Peterson</i> , 48 S.W.3d 36 (Mo. Banc 2001).....	6
<i>City of Springfield v. Clouse</i> , 206 S.W.2d 539 (Mo. 1947).....	6, 7, 8, 9, 10, 14, 15
<i>Finley v. Lindbergh School District</i> , 522 S.W.2d 299 (Mo. CT. App. 1975).....	11
<i>Menorah Med. Ctr. v. Health and Educ. Facilities Auth.</i> , 584 S.W.2d 73 (Mo. 1979).....	7
<i>Murray v. Mo. Highway and Transp. Comm’n</i> , 37 S.W.3d 228 (Mo. 2001)...	7
<i>Rathjen v. Reorganized School District of R-II of Shelby County</i> , 284 S.W.2d 516 (Mo. 1955).....	7

<i>St. Louis Teachers Ass'n v. Bd. of Educ. of City of St. Louis</i> , 544 S.W. 2d 573 (Mo. 1976).....	14
<i>School Dist. Of Kansas City v. Clymer</i> , 554 S.W.2d 483 (Mo. CT. App. 1977).....	14
<i>State v. Burnau</i> , 642 S.W. 2d 621 (Mo. 1982).....	9
<i>State ex. rel. Scott v. Dircks</i> , 111 S.W. 1 (Mo. 1908).....	7
<i>Sumpter v. City of Moberly</i> , 645 S.W.3d 579 (Mo. 2000).....	8, 9, 10, 15
<i>Yakus v. United States</i> , 321 U.S. 414 (1944).....	8

<u>Missouri Constitution</u>	<u>Page</u>
------------------------------	-------------

Art I, § 29, MO. CONST.	5, 6, 7, 9, 12, 13, 15
------------------------------	------------------------

<u>Missouri Revised Statutes</u>	<u>Page</u>
----------------------------------	-------------

§105.500 R.S. Mo. <i>et. seq.</i>	9
§105.510, R.S.Mo.....	12
§105.520 R.S. Mo.....	9
§165.016, R.S.Mo.....	12
§168.102 R.S.Mo. <i>et. seq.</i>	13

<u>Other Sources</u>	<u>Page</u>
----------------------	-------------

II Debates of the Mo. Const. Conv. Of 1943-44.....	6
The Developing Labor Law 376-414 (3d. ed. 1992).....	13

STATEMENT OF JURISDICTION

Amicus Curiae adopts the Statement of Jurisdiction submitted by the Plaintiffs/Appellants, Independence National Education Association, Independence Transportation Employees Association, Independence Educational Support Personnel, Randi Louise Mallet, and Ron Cochran.

STATEMENT OF FACTS

Amicus Curiae adopts the Statement of Facts submitted by the Plaintiffs/Appellants, Independence National Education Association, Independence Transportation Employees Association, Independence Educational Support Personnel, Randi Louise Mallet, and Ron Cochran.

INTEREST OF THE AMICUS

The American Federation of Teachers-Missouri (hereafter, “AFT-Missouri”) is a statewide organization representing over six thousand teachers and school-related personnel. It is one of forty-three state affiliates of the American Federation of Teachers, AFL-CIO which was founded in 1916 and represents more than one million members. AFT-Missouri is committed to protecting and expanding the employment rights of its members, building support for Missouri’s public schools, improving educational opportunities for all children, and preparing our students for responsible citizenship and productive adulthood. The organization advocates sound, commonsense public education policies, including

high academic and conduct standards for students and greater professionalism for teachers and school staff. This emphasis on quality in the workplace and ensuring the well-being of the institutions in which our members work and the students they serve have helped make the AFT-Missouri “A Union of Professionals.”

The viability and vitality of Missouri’s public schools is of paramount importance to AFT-Missouri for obvious reasons. AFT- Missouri’s members are educators who live in Missouri. They have chosen to begin or continue their life’s work in Missouri. Many will choose to retire in Missouri. Missouri’s public schools are where our members’ children and our neighbors’ children meet for an education. The schools are the source of our members’ families’ livelihood. AFT-Missouri’s interest in Missouri public schools is vested, and it is very real. It is from this basis of support for Missouri public schools, that AFT-Missouri comes to the Court as *amicus curiae* and offers its insight regarding the pending issues.

ARGUMENT

I. The plain language of Article I, Section 29 of the Missouri Constitution creates collective bargaining rights for public employees.

Article I, Section 29 of the Missouri Constitution clearly and unambiguously states: “That employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” Nothing in Article I, Section 29 limits in any way the type of employee or employer to whom

the provision applies, as it clearly expresses the fundamental right of all employees to bargain collectively with their employers through their chosen representatives. When a constitutional provision is clear on its face, the express language of the provision is controlling. *City of Hazelwood v. Peterson*, 48 S.W.3d 36 (Mo. 2001).

Despite the plain language of Article I, Section 29, in 1947, two years after its enactment, the Missouri Supreme Court held in *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. 1947) that public employees are not entitled to the collective bargaining rights so clearly stated in the Constitution. The Court recognized that “there is nothing improper in the organization of municipal employees into labor unions” and that organizations are “helpful to bring public officers and employees together to survey their work and suggest improvements in the public service as well as in their own working conditions.” *Id.* at 542. However, the Court held that the framers of Article I, Section 29 did not intend to apply the provision to public employees and that affording collective bargaining rights to public employees would be an unlawful delegation of legislative power.

Quite simply, had its framers intended to exclude public employees from Article I, Section 29, they would have done so. In fact, the framers rejected two proposed amendments that would have expressly excluded public employees from Article I, Section 29. II Debates of the Mo. Const. Conv. Of 1943-44, at 1962, 1969. Having examined the issue at length, it is simply not plausible that the

framers failed to include any exclusionary language with the intention that such language would later be implied. This Court has long emphasized the well settled rule of interpretation that “where no exceptions are made in terms, none will be made by mere implication or construction.” *State ex. rel. Scott v. Dircks*, 111 S.W. 1, 4 (Mo. 1908). In *Rathjen v. Reorganized School District of R-II of Shelby County*, 284 S.W.2d 516 (Mo. 1955), this Court again addressed the issue of constitutional construction via implication. In *Rathjen*, this Court refused to limit the express language of the Constitution, stating: “Plaintiffs are, in effect, asking us to imply an exception where none exists under the express terms or plain intendments of the constitutional provision. ***The law is well settled that it is the duty of the court, in construing the constitution, to give effect to an express provision rather than an implication.***” *Id.* at 522 (emphasis supplied). This Court’s reasoning in *Rathjen* should be controlling in this case as well. The plain language of Article I, Section 29 expressly confers collective bargaining rights to all employees and the exclusion of public employees as decided in *Clouse* should be overruled.

II. The non-delegation doctrine has been discredited by Missouri Courts.

The Court in *Clouse* based its decision to create an implied exception to Article I, Section 29’s plain language on the non-delegation doctrine. 206 S.W.2d at 545. In the sixty years since *Clouse*, however, Missouri courts have abrogated their previously rigid adherence to the non-delegation doctrine, particularly when

the powers are delegated to administrative agencies. See *Murray v. Mo. Highway and Transp. Comm'n*, 37 S.W.3d 228 (Mo. 2001); *Menorah Med. Ctr. v. Health and Educ. Facilities Auth.*, 584 S.W.2d 73 (Mo. 1979). Missouri courts' modern interpretation of the non-delegation doctrine is aligned with the U.S. Supreme Court's recognition that the non-delegation doctrine is simply unworkable in light of Congress' duty to promulgate detailed standards in many various regulated areas. See *Yakus v. United States*, 321 U.S. 414 (1944). As a result, the decision in *Clouse* is not only contrary to the plain language of the Constitution, but is also based on a doctrine that has been discredited by Missouri courts in the subsequent six decades.

III. *Sumpter v. City of Moberly* was wrongly decided and should be overruled.

The Court should also overrule *Sumpter v. Moberly*, 645 S.W.2d 359 (Mo. 1982). *Sumpter* extended the erroneous holding in *Clouse* to include agreements negotiated by public employers pursuant to legislative authorization found in the Public Sector Labor Law, Section 105.500 R.S. Mo. *et. seq.* *Sumpter* relies on the the now defunct non-delegation doctrine cited in *Clouse*, and it fails to recognize that the non-delegation doctrine is inapplicable even if it were a viable doctrine.

The agreements at issue in *Sumpter* were not the product of delegated legislative authority, but instead were specifically authorized by the legislature in Section 105.500 R.S.Mo. *et. seq.* and should be enforced as such. In Section

105.520 R.S. Mo., the legislature specifically authorized a governing body to adopt, modify, or reject a negotiated agreement. If adopted, a plain reading of the statute would mean that the agreement is binding for the term set forth in the agreement. Instead, *Sumpter* held that an adopted agreement could be unilaterally changed by the employer immediately after adoption. 645 S.W.2d at 363. This holding is not only against the plain language of the statute, but it is at odds with ordinary rules pertaining to the construction of legislative intent. An act of the legislature is presumed to have some effect and will not be construed to be meaningless. In fact this Court has repeatedly held that the first rule of statutory construction is to give effect to the intent of the legislature. See e.g. *State v. Burnau*, 642 S.W. 2d 621 (Mo. 1982). The Public Sector Labor Law is, in effect, meaningless under the *Sumpter* ruling in that it adds nothing to the previously established right of public employees to present proposals regarding working conditions to their employer. See *Clouse*, 206 S.W.2d at 542.

In order to give meaning and effect to the legislative authority exercised in the enactment of the Public Sector Labor Law, this Court should overrule *Sumpter* and allow agreements negotiated pursuant to the law to be fully enforceable and binding upon both parties.

IV. Collective Bargaining for public employers is good public policy.

The AFT-Missouri submits that the instant appeal before the Court does not provide the proper forum for a public policy debate regarding the potential

positive effects of collective bargaining because the question before the Court instead turns on the plain language of Article I, Section 29 of the Missouri Constitution. Moreover, a review of the record below reveals that neither party presented evidence to the trial court regarding the impact of collective bargaining on Missouri's public schools. New argument and evidence at this late stage in the appeal is irrelevant to an adjudication of the legal issues before the Court on appeal and therefore should not be considered. If, however, this Court decides to enter into the morass that is the collective bargaining debate, it should not be persuaded by ideological scare tactics presented by those who oppose the freedoms explicitly guaranteed to teachers and public employees to choose a representative and enter into good faith negotiations to improve their working conditions. The Appellants have cited numerous studies that have identified a positive correlation between public sector bargaining and a quality educational system. (Appellant's Reply Brief at 22). These studies, and many other similar studies, point out that the collective bargaining process can result in better Missouri schools for teachers and students alike.

In Missouri, there has been a recent discussion in education regarding directing more resources to the classroom rather than to needlessly excessive central school administration. (See Section 165.016, R.S.Mo. 2005). Perhaps the most underutilized resource in Missouri schools is the voice of those working in the classrooms. The shackles of *Clouse*, *Sumpter*, and other cases have

substantially limited the ability of teachers and other public employees to have meaningful participation in improving their own schools. Missouri teachers are excluded from the “meet and confer” process in which other Missouri public employees may participate. R.S. Mo. 105.510 provides that “Employees, except... all teachers of all Missouri schools, . . . shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing.”

Through the years, however, teachers have endeavored to make their voice heard despite the rulings and legislation in apparent direct contradiction of the Missouri Constitution. Agreements reached between teachers and school districts have been upheld by Missouri courts with the proviso that those agreements could be repealed or replaced at any time by the School Board. *Board of Education of Reorganized School District No. 5 of St. Charles County*, 506 S.W.2d 429 (Mo. 1974); *Finley v. Lindbergh School District*, 522 S.W.2d 299 (Mo. CT. App. 1975). These arrangements fall far short of good faith collective bargaining enjoyed by private sector employees, however, and do little to ensure labor peace for any length of time. Instead, they create an ever-present cloud of uncertainty over working conditions. The attempts by school districts and public employees to negotiate and agree are, however, evidence of the natural desire of an employer and its employees to reach an accord regarding wages and working conditions so

that important work can go forward in a productive environment. Missouri teachers and public employees do not deserve fewer rights than their private sector counterparts. They deserve to be a part of a meaningful, collaborative, and professional educational process. They deserve better than to be listened to today only on the condition that their input can be torn to shreds at the whim of their employer tomorrow. Article I, Section 29 of the Missouri Constitution provides a better way.

Across the nation, collective bargaining agreements have provided a vehicle for reform. When teachers are free to bring proposals to the negotiating table for discussion and enter into agreements based on those negotiations, it stands to reason that the teachers will have more ownership in the resulting product than a top-down mandated agenda in which they have no input. This “ownership”, also sometimes referred to as “buy-in”, is critical to the success of any educational reform.

The potential positive effects of collective bargaining are not limited to educational reform. Collective bargaining is much more likely than the existing system to lead to working conditions and benefits that are desirable to current and potential future employees. Currently, school boards and administrators dictate working conditions and benefits. According to this system, employment is a simple take-it-or-leave-it proposition. When the employees have little or no voice in the process of determining working conditions and benefits, it is quite likely

that employers are going to miss the mark in providing the optimum attractive working environment for the budget available. This can result in wasted expenditures for “benefits” that are not perceived as such by current or potential employees. Employees empowered with a voice through collective bargaining can guide the selection of benefits and working conditions to craft the most attractive package for the employees. Employers who provide the most attractive benefits and working conditions are in the best position to attract and retain the highest qualified and most productive employees. Certainly, all Missourians want their public schools to be staffed by the best and brightest. Collective bargaining can assist Missouri public schools to achieve that laudable goal. Evidence that the framers of Article I, Section 29 of the Missouri Constitution recognized the potential benefits of collective bargaining is provided by the plain language of that very prominent and clear constitutional provision.

The recognition of a Constitutional right to bargain for public employees would not compel any public employer to agree to any particular collective bargaining provision. Instead the process is designed to reach an agreement – a desirable result for the employer *and the employees*. Moreover, collective bargaining does not compel any particular employee to join any particular labor organization. Instead, the democratic process that is the very backbone of our country’s representative government also controls the selection of a bargaining representative. See *The Developing Labor Law* 376-414 (3d. ed. 1992). In

addition, collective bargaining agreements would be subject to legislatively imposed terms and conditions of employment dictated by the Missouri Teacher Tenure Act, Section 168.102 R.S.Mo. In particular, the legislation would continue to require specific procedures for hiring and firing teachers.

Likewise, the Court should not be persuaded by misguided statements regarding the ability of public employees to engage in labor strikes should the Court uphold the Constitutional right of collective bargaining for employees. In Missouri, there is a long-standing common-law prohibition against such strikes. *See St. Louis Teachers Ass'n v. Bd. of Educ. of City of St. Louis*, 544 S.W. 2d 573 (Mo. 1976); *School Dist. Of Kansas City v. Clymer*, 554 S.W.2d 483 (Mo. CT. App. 1977).

Fear mongers have often thrown obstacles in the path of Constitutional freedoms. Our national experience has proven that the fair and just path is often not the path of least resistance. Resistance to collective bargaining for public employees began in 1947 when the *Clouse* court ruled against the plain language of the Missouri Constitution and it continues to present day through employers who seek to protect *Clouse's* house of cards. AFT-Missouri implores this Court to uphold the Constitution on behalf of *all* of its intended beneficiaries and affirm the right of public employees to collectively bargain for improved working conditions.

CONCLUSION

For the foregoing reasons, the American Federation of Teachers-Missouri respectfully suggests that this Court overrule the decisions of *Clouse* and *Sumpter* which are inconsistent with the plain language of the Missouri Constitution and declare that public employees have the right to engage in collective bargaining under Article I, Section 29.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2007, I served a copy of the foregoing pleading via first class mail upon the following counsel of record:

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RULE 84.06 CERTIFICATION

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b) and contains 3,157 words. The disk submitted with this brief has been scanned for viruses and to the best of my knowledge is virus-free.

Frederic O. Wickham